IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER

(1) AMOL SINGH V. STATE OF RAJASTHAN
(S. B. CRIMINAL MISC. PETITION NO.1725/2007)

(2) DILBHAJAN SINGH V. STATE OF RAJASTHAN.
(S. B. CRIMINAL MISC. PETITION NO. 1813/2007)

Both the aforesaid petitions, under Section 482, Cr. P.C., against the Order dated 27.8.2007, passed by the Additional Judicial Magistrate No.2, Bikaner in Criminal Case No. 22/2007.

DATE OF ORDER: DECEMBER 3, 2008.

PRESENT

HON'BLE MR. JUSTICE C. M. TOTLA

Mr. S.L.Jain, for Petitioner (s).
Mr. O.P.Rathi, Public Prosecutor.

BY THE COURT:

Both these petitions assail order dated 27.8.07, directing framing of charges for the offences of Sections 409 and 420, IPC, against petitioners.

Petitioners request quashing/reversal of above order and their discharge.

Brief alleged necessary facts and developments are that on 19-6-98, Deputy Director (Administration), Secondary Education, Bikaner lodged the FIR alleging that (1) for this Department and for Government use, 14 jeeps were to be purchased, (2) M/s. Oriental Automobiles Pvt.

Ltd. is authorized dealer of Mahendra & Mahendra company which also is a DGS rate contract, (3) C.L.Sharma is Manager and D.L.Sandhu, president of this Company, (4) registered office at Delhi and a official show-room at Bikaner, (5) Company undertaken supply of jeeps, (6) agreement entered into on January 8th for supply of 14 jeeps, (7) 95% amount Rs.4184685/- paid as advance, (8) jeeps to be supplied within 30 days, otherwise re-payment with interest. In FIR is alleged that despite several requests and efforts, supply not made and after repeated efforts, only one jeep given in May, 98, though amount paid in advance as above and thus, criminal misappropriation and deceit with fraud etc. committed. After investigation, challan describing petitioners Amol Singh and Dilbhajan Singh and also Charanajeet Lal as accused. Learned Magistrate, vide impugned order, disagreeing with the contentions of the petitioners, ordered framing of charge for the offences of Sections 409 and 420, IPC.

Learned counsel on behalf of the petitioners argued that (i) A ceased to be Director w.e.f. 3.6.97 – intimation of ceasing made to Registrar of Companies, New Delhi, in Form No.32 - which information is made available in course of investigation. (ii) As per provisions of the Companies Act, specific Section 179 of the Act, A thereafter, in no way, responsible. (iii) A did not receive any amount – not conducting business neither responsible nor in any way related to alleged happenings. (iv) Banks also were informed of change of Directorship. (v) As per letter of the company and as published in a daily newspaper of October, 98, this company not dealer of Mahendra & Mahendra – Company's letter of July, 99 also on record to this effect – petitioners in no way used this amount. Further argued, it is not the case of the prosecution that the petitioners are not authorized dealers.

On behalf of petitioner B, also advanced are similar arguments.

Learned counsel for the petitioners vehemently argued that (i) it is exclusively a civil dispute – as per agreement stipulation is of re-payment of interest. (ii) Complainant – department initiated proceedings before National Consumer Forum and relief granted. (iii) Also additional payment

of Rs. 5 lacs as compensation as per directions of the National Consumer Forum. (iv) Complainant's department availing alternative remedy of deficiency in service – have already received total amount with Rs. 5 lacs extra. Also jeep was supplied, (v) amount was remitted to Mahendra & Mahendra. (vi) Jeep supplied. (vii) As the amount remitted to Mahendra & Mahendra, no amount retained by Oriental Automobiles – so no question of breach of trust. Also submitted that alleged acts do not come within the ambit of criminal breach of trust as defined in Section 405 and cheating as defined in Section 420, IPC. Also argued that shareholdings of petitioner is of so not established.

Lastly on behalf of the petitioners submitted that the alleged incident and occurrence are of the year, 98 - entire amount with compensation of Rs. 5 lacs stands paid - 9 years elapsed since then – complainants initiated proceedings before National Consumer Forum and have received entire original amount plus Rs. 5 lacs compensation – Oriental Company has also lodged complaint against Mahendra & Mahendra – written agreement as above stipulating return of money with interest – so it is now futile exercise and not just to proceed – so the matter is equivalent to as compromised, exercising inherent powers, proceedings should be quashed. Argued that since 9 years have elapsed and above are the circumstances, so it is a fit case for quashing proceedings, particularly when written agreement stipulating re-payment with interest was.

In support of above contentions, reliance is placed on (i) 1998 Cr.L.R. (SC) 670, Nageshwar Prasad Singh @ Sinha v. Narayan Singh & Another, (ii) 2004 WLC (Raj.) UC 493, Chandra Kalla v. State of Rajasthan & Others, (iii) 1982 WLN (UC) 195, Kanhaiya Lal v. The State of Rajasthan, (iv) AIR 1988 SC 709, Madhavrao Jiwaji Rao Scindia & another v. Sambhajirao Chandrojirao Angree & others, (v) 2001 (1) Recent Criminal Cases 344, Vunna Visali v. State of Andhra Pradesh & another, (vi) JT 2007 (4) SC 493, Thelapalli Raghavalah v. Station House Officer & Others, (vii) 2001 (1) RCC 529, Alpic Finance Ltd. v. P.Sadasivan &

another, (viii) JT 2007 (5) SC 510 Nalini Shankaran & others v. Neelkanth Mahadeo Kamble & Others, (ix) WLC (Raj.) UC 761, Iqbal & Another v. State & Another, (x) AIR 2002 Bombay 194 Saumil Dilip Mehta v. State of Maharashtra & Others, (xi) JT 2007 (2) SC 233, Saroj Kumar Poddaar v. State (NCT of Delhi) & Another, (xii) JT 2000 (12) SC 20, Sabitha Ramamurthy & Another v. R.B.S. Channabasavaradhya, (xiii) AIR 1983 SC 67, Municipal Corporation of Delhi v. Ram Kishan Rohtagi & Others, (xiv) AIR 1989 SC 1982 Sham Sundar & Others v. State of Haryana, (xv) (1996) 5 SCC 591, Central Bureau of investigation, SPE, SIU (X), New Delhi v. Duncans Agro Industries Ltd., Calcutta, & (xvi) 2007 AIR SCW 4816, Veer Prakash Sharma v. Anil Kumar Agarwal.

Extensively reading material submitted with the charge-sheet, learned counsel for the petitioners argued that no criminal case is made out against any petitioners and no averments of individual liability for petitioners is in the complaint and charge-sheet so on the basis of alleged Director, they cannot be held responsible. Submitted that since 97, they ceased to be Directors.

Learned Public Prosecutor stated that petitioners were Directors Incharge of the Company also involved in day-to-day business of the company - 95% advance payment about Rs. 40 lacs made and 14 jeeps were to be delivered within 30 days, but not delivered despite repeated efforts – delivered only one jeep in May, 08, but that cannot absolve the petitioners of their responsibility. Submitted that petitioners, if send the money to Mahendra & Mahendra, then the jeeps were provided by them and not supplied to the department and thus criminal breach of trust.

Considered arguments, perused copies of record and impugned order.

Petitioners request quashing of the charge. In such matters, where proceedings are pending or likely to proceed, the Courts, while dealing with petitions under Section 482, Cr.P.C., have to take extra care so as not to discuss, analyse or weigh the alleged facts and happenings in such

a way as may in any way be tending to affect or inferencive one in relation to any disputed facts and proceedings.

Broadly speaking, for quashing, the test to be applied is if is one existence of uncontroverted allegations as may prima facie establish the offence if other ingredients supplied. Breach of trust constitute a civil wrong and also can be a criminal offence. The Directors may vicariously be liable for the offences committed by the company and are liable in case they incharge of and were responsible for the conduct of the business of the company. Proceedings can be quashed, if continuation is nothing, but only abuse of the process of the Court – for the reasons and circumstances with facts to be taken cumulatively and together.

In the instant case, (i) for supply of 14 jeeps, the company received payment 95% advance Rs.4184685/- on 13.1.98 – stipulation of supply within 30 days – in case of default, repayment with interest – also additional are stipulations of supply as per CG & DS rate contract, even in increase of rate. (ii) As per material collected and statements recorded in course of investigation, amount credited to petitioner company's account by 15th January. (iii) on January 15th through a cheque signed by A 3405100 withdrawal from the account in which the amount was paid. (iv) According to other bank, in July, 97, a letter authorizing operation of bank account by petitioner B and one other. (v) As per Mahendra & Mahendra, between 15.1.98 to 19.1.98, Rs.4219925/- credited by company to them for supply of jeeps. (vi) Mahendra & Mahendra supplied one vehicle on 16.1.98, 9 on 17.1.98, 3 on 19.1.98 and 1 on 23.1.98 thus total 14. (vii) Only one jeep given to department but that too in May, 98, after repeated correspondence and efforts. (viii) Company no more authorized dealer, but only as per Mahendra & Mahendra's letter of July, 99, that is from that time and in any case, as above, amount remitted to company for supply of jeep in January and jeep supplied by Mahendra & Mahendra to the company.

As such after receipt of money, the same was remitted to the supplier Mahendra & Mahendra who supplied jeeps in the month of

January itself, but not delivered to the department – only one jeep delivered that too, in January, 98. Money was given in the capacity of agent for purchase and also as dealer for supplier.

Now, considering ground of receipt of amount along with additional Rs. 5 lacs. Normally for a criminal breach of trust proceedings civil as well as criminal, can be independently. In the instant case, though the complainant initiated proceedings before the National Consumer Forum which decided vide order dated 16.7.07, but the matter was not compromised. Relevant is also this that no-where it appears that petitioners, on their own, offered payment. As stated, 95% advance payment – Rs.42 lacs received-the same was remitted for supply of the vehicles and vehicles delivered to company, but not supplied (except one) to the department till many months and ever.

In the opinion of this Court, clear seems disclosures-on the basis of material collected in course of investigation that-of- (i) Payment of about Rs. 42 lacs to company (petitioners)for supply of 14 jeeps on and by 15.1.98. (ii) Remittance of amount to Mahendra & Mahendra for supply of jeep.(iii) Jeeps supplied by M & M to P company in only month of Jan. 98. Delivery of only one jeep, that too in May. (iv) Non-supply of remaining jeep-clinches the issue for framing of charges.

For the reasons above, arguments, in context of quashing of charge and proceedings, are devoid of merit – the order framing charge requires no interference and petitions are to be rejected.

Accordingly, both the petitions are rejected. However, it is made clear that every observation and discussion in this order, are only for and in context of disposal of these petitions.

Accordingly, both the petitions are rejected.

(C. M. TOTLA), J.

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